

EXHIBIT 9

FILED UNDER SEAL

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GOOGLE LLC,

Plaintiff,

vs.

No. 3:20-cv-06754

SONOS, INC.,

Defendant.

_____/

-- ATTORNEYS' EYES ONLY --

VIDEO-RECORDED DEPOSITION OF JAMES MALACKOWSKI

REMOTE ZOOM PROCEEDING

New Buffalo, Michigan

Friday, August 26, 2022

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

Job No. CS5367688

1 Q. BY MS. COOPER: All right. You should have
2 Exhibit 1198.

3 A. I do.

4 Q. You've seen this agreement before; correct?

5 A. I have. It's discussed within my report.

6 Q. This is a patent purchase agreement; correct?

7 A. It's so labeled as such, and I believe
8 effectively that's what it is, yes.

9 Q. Do you agree that owning a patent provides more
10 rights than merely having a license to a patent?

11 A. In general, I believe that to be true. It also
12 provides more -- requires more obligation, such as
13 maintenance and the like. But importantly, you need to
14 look at the context of the purchase versus, in contrast,
15 a hypothetical negotiation.

16 Most patents are not of significant value or
17 certainly are not of value reflecting specific features
18 that are promoted and sold in the market, and those are
19 often acquired at lump sum prices but do not reflect
20 important information for the hypothetical.

21 Q. Have you studied the value of the patents that
22 Google acquired from Outland Research?

23 A. "Studied" is a vague term. I understand that
24 there are 12 patents, 4 applications, as part of the
25 agreement, that they relate to music media collaboration

1 reliable information of that case. I suspect, in having
2 done this hundreds of times, that there are examples
3 where the most reliable or the only data point was an
4 acquisition.

5 Q. So the fact that a market data point may be a
6 patent purchase agreement rather than a non-exclusive
7 patent license, doesn't rule it out as being potentially
8 relevant; correct?

9 A. It doesn't rule it out per se, unless there is
10 obviously a better benchmark. In which case, you would
11 eliminate it as a matter of fact.

12 Q. One of the reasons you think the Outland patent
13 purchase agreement is not comparable is because Google
14 and Outland are not competitors; correct?

15 A. And more specifically, as I describe in my
16 report, that Outland is not a manufacturer in -- in the
17 speaker market at all. That they are more in the realm
18 of a non-practicing entity.

19 Q. You haven't done a technical analysis regarding
20 the comparability of the patent that Google acquired from
21 Outland Research; correct?

22 A. I'm not -- I have not advanced a technical
23 comparison. I do describe what they generally relate to,
24 and I shared that with you earlier.

25 Q. Do you dispute that the patents that Google

1 acquired in this case are technically comparable to the
2 '885 patent?

3 A. I'm not offering that opinion. That's a
4 question that's better for the technical experts.

5 Q. Do you know whether the technical experts
6 dispute that?

7 A. I don't believe there is an opinion on that
8 agreement from the Sonos technical experts because of the
9 lack of relevance. But I defer to his report. I -- I
10 could be misremembering that.

11 Q. Do you have a basis to disagree with Google's
12 technical experts that the patents covered by this
13 agreement are technically comparable to the '885?

14 A. I have not offered a disagreement. I don't
15 think that's a relevant consideration, given the economic
16 comparability. But I have not offered a technical
17 rebuttal.

18 Q. In order to purchase the 12 patents and 4 US
19 patent applications relating to music media collaboration
20 and interface technology, Google made a lump sum payment
21 of 2.25 million; correct?

22 A. Yes. In consideration of all elements of the
23 agreement, that was the amount of the payment, as I
24 describe on page 49 of my report.

25 Q. And that's a lump sum payment, not a running

1 STATE OF CALIFORNIA) ss:

2 COUNTY OF MARIN)

3
4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do
5 hereby certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set forth
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all objections
10 made by counsel at the time of the examination were
11 recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision, and that
13 the foregoing pages contain a full, true and accurate
14 record of all proceedings and testimony to the best of my
15 skill and ability.

16 I further certify that I am neither counsel for
17 any party to said action, nor am I related to any party
18 to said action, nor am I in any way interested in the
19 outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 30th day of August, 2022.

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23
24 

25 LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462